

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA

AUGUSTA DIVISION

JAMES S. FALLER, II,

Petitioner,

v.

DAVID ESTES, Acting U.S. Attorney; and
LORI MITCHELL, U.S. Probation Office,

Respondents.

CV 121-153

ORDER

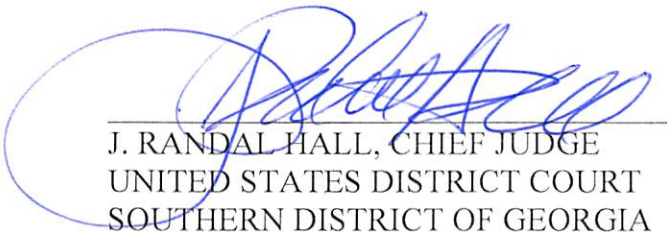
After a careful, *de novo* review of the file, the Court concurs with the Magistrate Judge's Report and Recommendation, to which objections have been filed. (Doc. no. 8.) Nothing in the objections changes the analysis that this Court lacks jurisdiction to address the petition filed pursuant to 28 U.S.C. § 2241, and the Court **DENIES** the renewed request to file the sealed materials returned to him based on the November 10, 2021 Order of the United States Magistrate Judge, (doc. no. 7).

Although Petitioner's renewed request sounds more in the nature of a motion for reconsideration rather than an objection to the Magistrate Judge's Order, for the sake of completeness, the Court makes clear any such objection to the Order denying Petitioner's November 1, 2021 motion to seal, (doc. no. 6), is without merit. The Court modifies or sets aside non-dispositive rulings by the Magistrate Judge that are "clearly erroneous or . . . contrary to law." Fed. R. Civ. P. 72(a). A ruling is clearly erroneous when the Magistrate Judge abuses his discretion or the District Judge "is left with a definite and firm conviction that a mistake

been made.” Jackson v. Deen, CV 412-139, 2013 WL 3991793, at *2 (S.D. Ga. Aug. 2, 2013). A ruling is contrary to law when it fails to follow or misapplies the law. Id. As thoroughly explained in the recommendation for dismissal, (doc. no. 5), the Court lacks jurisdiction in this case. Neither Petitioner’s reliance on comments in the dissent in McCarthan v. Director of Goodwill Industries-Suncoast, Inc., 851 F.3d 1076 (11th Cir.) (*en banc*), *cert denied sub nom. McCarthan v. Collins*, 138 S. Ct. 502 (U.S. 2017), nor his reliance on a claim of actual innocence changes that conclusion. The Court cannot hear the case, and the Magistrate Judge’s ruling denying Petitioner’s motion to seal is not clearly erroneous or contrary to law. See Fed. R. Civ. P. 72(a); Loc. R. 72.2; Staley v Owens, 367 F. App’x 102, 104 n.1 (11th Cir. 2010) (*per curiam*).

Accordingly, the Court **ADOPTS** the Report and Recommendation of the Magistrate Judge as its opinion, **DENIES** the motions for appointment of counsel and to seal, (doc. nos. 3, 4), **DISMISSES** the § 2241 petition for lack of jurisdiction, **CLOSES** this civil action, and **DIRECTS** the Clerk to enter an appropriate judgment of dismissal. The Court further **DIRECTS** the Clerk to return to Petitioner the submissions which accompanied the now-denied motion to seal filed October 6, 2021, (doc. no. 4).

SO ORDERED this 22nd day of November, 2021, at Augusta, Georgia.



J. RANDAL HALL, CHIEF JUDGE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA